IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5363 of 2002

with

SPECIAL CIVIL APPLICATION No 5364 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHETANBHAI G. SHETH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5363 of 2002
   MR DM THAKKAR for Petitioner No. 1
   MR AY KOGJE, AGP for Respondent No. 1-3
   MS PJ DAVAWALA for Respondent No. 4
2. Special Civil Application No. 5364 of 2002
   MR DM THAKKAR for Petitioner No. 1
   MR HH PATEL, AGP for Respondent No. 1-3
   MS PJ DAVAWALA for Respondent No.4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 25/07/2002

ORAL COMMON JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioners- who are co-detenu have challenged the legality and validity of the order of detention dated 21.5.2002 passed against both of them by the District Magistrate, Bhavnagar, in exercise of the powers conferred on him by Section 3(2) of The Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the "PBM Act").

2. The impugned order of detentions passed on 21.5.2002, were executed on 22.5.2002 and grounds for detention were supplied to the detenu. It is the say that the sponsoring machinery had formulated grounds for detention and same were placed before the detaining authority. The detaining authority on the material placed, recorded its subjective satisfaction to the effect that the petitioners are involved in violating the provisions of Control Order Kerosene (Restriction on use and Fixing Ceiling Price) Order, 1993 (hereinafter referred to as the Order of 1993) as well as the provisions of Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as the Order of 1981). It is alleged that the blue kerosene required tobe distributed from Fair Price Shop was not adequately supplied/ distributed to the card-holders and was siphoned for getting more price than the price fixed by the Order of 1993. Detaining authority has recorded that the petitioners are likely to indulge in same activities and it would disrupt the system of distribution of blue kerosene from the Fair Price Shop started on the strength of the licence issued to the petitioners by the Mamlatdar of Mahuva taluka. Statements of the card-holders of the concerned village as well as the copies of the ration-cards are also part of the grounds of detention intimated and served to the petitioners.

3. The petitioners have challenged the legality and validity of the orders of detention passed against them on number of grounds. However, ld. counsel Mr. Thakkar appearing for the petitioners in both the petitions, has concentrated and restricted his arguments mainly on two grounds viz. (i) that the petitioners were not supplied with the copy of the Order of 1993 and that copy of the Order of 1981 supplied to the petitioners was found

illegible. Some pages of the Order of 1981 supplied to the petitioners were illegible and this non-supply of important and vital document has resulted into serious prejudice to the petitioners in making effective representation under their right flowing from Article 22(5) of the Constitution of India, and (ii) that the detaining authority was supposed to pass the orders of detention promptly and delay of about 1 month & 7 days in passing the orders of detention should be treated as fatal as this delay has not been explained by the detaining authority.

4. While enlarging the arguments on the first point i.e. non-supply of essential and vital documents referred to and relied upon by the detaining authority, Mr. Thakkar has submitted that in the written representations made by the Advocate of the petitioners dated 31.5.2002, it is clearly stated therein that the petitioners are not supplied with legible copy of the Order of 1981 and that the petitioners are not at all supplied with copy of Order of 1993. In para-10 of the representation, legible copies of certain documents were demanded. It is, however, submitted that till the date of filing of these petitions, copy of the Order of 1993 has not been supplied to the petitioners. On careful perusal of documents supplied to the petitioners, the Court is satisfied that some part of Order of 1981 is not legible and so the grievance of the petitioners in this regard is genuine. It is rightly argued that above-referred two important Orders viz. Order of 1993 & Order of 1981 referred to and relied upon by the detaining authority in formulating the grounds of detention and while passing the actual orders of detention, were required to be supplied to enable the petitioners to make effective representation and non-compliance of this requirement would vitiate the legality and validity of the order of detention in view of the right flowing from Article 22(5) of the Constitution of India.

5. In support of above submission, Mr. Thakkar has placed reliance on three different decisions of this Court, namely;-

(1) Decision in the case of Bhikhabhai Ramjibhai Patel v/s State of Gujarat rendered in Spl.C.A. No. 6424/2000 decided on 1.9.2000 (Coram : D.P.Buch,J);

(2) Decision in the case of Hiralal Tulsidas Thakkar v/s State of Gujarat rendered in

Spl.C.A. No. 5646/2001 decided on 20.9.2001 (Coram : A.M.Kapadia, J); and

(3) Decision in the case of Rameshkumar Sindhi Govindlal v/s State of Gujarat rendered in Spl.C.A. No. 6551/2001 decided on 11.10.2001 (Coram : A.M.Kapadia, J);

6. In all the aforesaid decisions, the petitioners were not supplied with the relevant Control Orders and in one of the decisions, the petitioner was not supplied above-reffered Order of 1993. This Court in all the aforesaid three decisions has held that the ratio of the decision in the case of Mohd. Zakir v/s Delhi Administration and others, AIR 1982 SC 696 would apply to the facts situation relating to non-supply of relevant and vital documents referred to and relied on by the detaining authority in formulating the grounds of detention and ultimately, in all the aforesaid three decisions, the orders of detention under challenge have been quashed and set aside by the Court.

7. Ld. AGP has tried to submit that the State machinery or the detaining authority is not supposed to supply any Order or Regulation which has a status of Statute. However, in view of the ratio propounded by this Court in the above-referred three decisions, this submission of ld. AGP would not help the respondents. Orders/ Control Orders are issued by the State Government in exercise of the powers flowing from the Statute and it is likely that all citizens concerned may not be aware about the number of Circulars or Control Orders or Controlling Regulations promulgated by the State in exercise of the powers flowing from a Statute. So, such Orders upon which the detaining authority intends to place reliance can be equated with the documents which are vital and important and the same are required to be supplied to the detenu. In the instant case, as discussed herein above, such important and vital documents are not supplied to the petitioners which has seriously prejudiced their right to make an effective representation flowing from Article 22(5) of the Constitution of India as per the settled legal position propounded by this Court in the above-referred three decisions. Hence, on this first ground alone, orders of detention passed against the petitioners require to be quashed and set aside. Since, impugned orders of detention require to be quashed and set aside on this

ground alone, it is not necessary to deal with and go into the merits of the second point raised by the ld. counsel appearing for the petitioner or to deal with and go into the merits of the other grounds and contentions raised by the petitioners in the memo of their respective petitions.

8. For the reasons recorded in the common oral judgment, both the petitions are hereby allowed. Impugned orders of detention dated 21.5.2002 passed by the District Magistrate, Bhavnagar against the respective detenu are hereby quashed and set aside and detenu Shri Chetanbhai G.Sheth and Shri Kaushikbhai N.Dani are hereby ordered to be set at liberty forthwith if they are not required to be detained in any other case. Rule is made absolute in each petition. Direct service is permitted.

25.7.2002 [C.K. BUCH, J]
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